

APPEAL NO. 022162
FILED SEPTEMBER 24, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 1, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the respondent (carrier) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001; and that because the claimant did not sustain a compensable injury, he did not have disability. The claimant appealed on sufficiency of the evidence grounds and the carrier responded, urging affirmance.

DECISION

Affirmed in part; reversed and rendered in part.

We have reviewed the complained-of determinations and find that the hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____, and therefore did not have disability. The issues presented questions of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed issues. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

On the issue of timely notice, the hearing officer determined that the claimant gave notice to his employer of a repetitive trauma injury on _____, but did not give notice of a specific injury until on or about January 31, 2002. Based upon the hearing officer's findings of fact, it is clear that she believed that the claimant knew he had a serious injury to his right shoulder on _____, and that he gave notice of the injury to his employer that same day. There is only one claimed injury in this case, the date of injury was not an issue in this case, and whether the notice given was for a specific injury or a repetitive trauma injury is irrelevant. What is relevant to the issue of timely reporting is the fact that the employer had notice of a claimed injury to the claimant's right shoulder on _____, not whether the claimant thought the injury was caused by a specific incident or by repetitive trauma. Based on the above, we find that the hearing officer's determination that the claimant did not timely notify his employer of the claimed injury is against the great weight and preponderance of the evidence.

We affirm the hearing officer's decision and order that the claimant did not sustain a compensable injury on _____, and therefore did not have disability. We reverse the hearing officer's decision and order that the carrier is relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001, and render a new decision that the carrier is not relieved of liability under Section 409.002 because the claimant did timely notify his employer pursuant to Section 409.001.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS' INSURANCE COMPANY** and the name and address of its registered agent for service of process is

JAVIER GONZALEZ
3421 WEST WILLIAM CANNON DRIVE, SUITE 131, PMB 113
AUSTIN, TEXAS 78745.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge